



EEOC Issues Proposed Rules to Expand Wellness Program Incentives

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Last week, the Equal Employment Opportunity Commission (“EEOC”) announced that it plans to amend regulations for Title II of the Genetic Information Nondiscrimination Act (“GINA”) to allow employers who offer wellness programs to provide financial and other incentives to employees who voluntarily provide his or her spouse’s current or past health information.

By way of brief background, Title II of GINA, which the EEOC seeks to amend, prohibits employers from discriminating against current, former, or prospective employees on the basis of their genetic information. Employers are barred from requesting or purchasing genetic information unless they satisfy one of six exceptions to GINA: (1) inadvertent acquisitions of genetic information; (2) acquisition of genetic information through employers’ health and genetic services, including wellness programs; (3) acquisition through the certification for FMLA leave; (4) acquisition through commercially and publicly available documents without the intent of finding genetic information; (5) acquisition through genetic monitoring programs required by law that monitor the biological effects of toxic substances in the workplace; or (6) acquisition through DNA testing for law enforcement purposes.

Specifically, the EEOC seeks to expand the second narrow exception, acquiring genetic information through employers’ wellness programs. Currently, wellness programs offered by employers cannot require employees or their spouses to provide their current or past health status in exchange for financial or other incentives.

In April, the EEOC published a proposed rule change to the American with Disabilities Act (“ADA”), which would allow an employer to offer limited incentives in exchange for an employee’s medical information obtained through the employer’s wellness programs. With the proposed rule change to GINA published last week, the EEOC sought to harmonize the rules.

The proposed rules allow employers to provide incentives to an employee or his or her spouse who provides information about his or her current or past health status as a result of participating in a wellness program. These wellness programs must reasonably raise the chances of improving health or preventing diseases. However, the proposed rules come with some limitations. The total incentives for an employee and an employee’s spouse cannot exceed 30 percent of the total cost of the health plan they are enrolled in. For example, if an employee’s health plan costs \$10,000 a year, the employer cannot offer more than \$3,000 worth of incentives, whether it is in the form of prizes, time-off awards, or other items of value.

The EEOC chair, Jenny Yang, stated the proposed rule would “protec[t] workers and their families while encouraging wellness programs that benefit employers and employees alike.”

Employers have advised pay attention to the development of the EEOC’s proposed regulations regarding wellness programs. Companies should revisit their wellness programs and ensure that the programs comply with GINA and the ADA.

If you have any questions or concerns regarding employment or education-related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

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